UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

February 17, 2015 at 10:00 a.m.

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1. 14-26702-A-13 TERRY/ELLEN AMOS — MOTION TO
14-2326 KEK-1 — DISMISS ADVERSARY PROCEEDING
AMOS V. HSBC MTG. SVCS., INC., ET AL. — 12-29-14 [22]

Tentative Ruling: The motion will be granted and all claims against Caliber Home Loans, Inc., LSF9 Master Participation Trust, and Mortgage Electronics Registration Systems, Inc., will be dismissed.

Fed. R. Civ. P. 12(b)(6) permits dismissal when a complaint fails to state a claim upon which relief can be granted. Dismissal is appropriate where there is either a lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory. Saldate v. Wilshire Credit Corp., 686 F. Supp. 2d 1051, 1057 (E.D. Cal. 2010) (citing Balisteri v. Pacifica Police Dept., 901 F.2d 696, 699 (9th Cir. 1990)(as amended)).

"In resolving a Rule 12(b)(6) motion, the court must (1) construe the complaint in the light most favorable to the plaintiff; (2) accept all well pleaded factual allegations as true; and (3) determine whether plaintiff can prove any set of facts to support a claim that would merit relief." See Stoner v. Santa Clara County Office of Educ., 502 F.3d 1116, 1120-21 (9th Cir. 2007); see also Schwarzer, Tashmina & Wagstaffe, California Practice Guide: Federal Civil Procedure Before Trial, § 9.187, p. 9-46, 9-47 (The Rutter Group 2002).

"To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.' . . . A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. . . . The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully. . . . Where a complaint pleads facts that are 'merely consistent with' a defendant's liability, it 'stops short of the line between possibility and plausibility of "entitlement to relief."'" Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (Citations omitted).

"In sum, for a complaint to survive a motion to dismiss, the non-conclusory 'factual content,' and reasonable inferences from that content, must be plausibly suggestive of a claim entitling the plaintiff to relief." Moss v. U.S. Secret Service, 572 F.3d 962, 969 (9th Cir. 2009) (quoting Iqbal at 678).

The Supreme Court has applied a "two-pronged approach" to address a motion to dismiss:

"First, the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitals of the elements of a cause of action, supported by mere conclusory

statements, do not suffice. . . . Second, only a complaint that states a plausible claim for relief survives a motion to dismiss. . . . Determining whether a complaint states a plausible claim for relief will . . . be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense. . . . But where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not 'show[n]'-'that the pleader is entitled to relief.'

"In keeping with these principles a court considering a motion to dismiss can choose to begin by identifying pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth. While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations. When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief."

Ashcroft v. Iqbal, 556 U.S. 662, 678-79 (2009) (Citations omitted).

"A pleading that states a claim for relief must contain . . . (2) a short and plain statement of the claim showing that the pleader is entitled to relief . . . ." Fed. R. Civ. P. 8(a)(2). Further, "[i]f, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56." Fed. R. Civ. P. 12(d); S&S Logging Co. v. Barker, 366 F.2d 617, 622 (9th Cir. 1966). If either party introduces evidence outside of the challenged pleading, a court *may* bring the conversion provision (Rule 12(d) - converting motion to dismiss into motion for summary judgment) into operation. Cunningham v. Rothery (In re Rothery), 143 F.3d 546, 548-549 (9th Cir. 1998).

A federal court has the obligation to review sua sponte whether it has subject matter jurisdiction under Article III's case-or-controversy requirement. Fed. R. Civ. P. 12(h)(3) (providing that "[i]f the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action"); Arbaugh v. Y&H Corp., 546 U.S. 500, 506 (2006); Florida Wildlife Fed'n, Inc. v. South Florida Water Mgmt. Dist., 647 F.3d 1296, 1302 (11th Cir. 2011); see also Corporate Mgmt. Advisors, Inc. v. Artjen Complexus, Inc., 561 F.3d 1294, 1296 (11th Cir. 2009) (citing 28 U.S.C. § 1447(c)).

"Federal courts are always 'under an independent obligation to examine their own jurisdiction,' . . . and a federal court may not entertain an action over which it has no jurisdiction." Hernandez v. Campbell, 204 F.3d 861, 865 (9th Cir. 2000)(citing FW/PBS, Inc. v. City of Dallas, 493 U.S. 215, 231 (1990) and Ins. Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee, 456 U.S. 694, 701 (1982)).

Bankruptcy jurisdiction extends to four types of title 11 matters, cases "under title 11," cases "arising under title 11," proceedings "arising in a case under title 11," and cases "related to a case under title 11." See Stoe v. Flaherty, 436 F.3d 209, 216 (3rd Cir. 2006).

The first three types of title 11 matters are termed as core proceedings by 28 U.S.C. § 157(b)(1), which provides that "[b]ankruptcy judges may hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11 . . . and may enter appropriate orders and judgments." Contra Stern v. Marshal, 131 S. Ct. 2594, 2608 (2011) (creating another category of core claims as to which the bankruptcy court

cannot enter final judgment, treated as "cases related to a case under chapter 11"); see also Executive Benefits Ins. Agency v. Arkison (In re Bellingham Ins. Agency, Inc.), 134 S. Ct. 2165, 2172 (2014).

"Stern made clear that some claims labeled by Congress as 'core' may not be adjudicated by a bankruptcy court in the manner designated by § 157(b). Stern did not, however, address how the bankruptcy court should proceed under those circumstances. We turn to that question now."

Bellingham Insurance at 2172.

28 U.S.C. § 157(b)(2) states that "[c]ore proceedings include, but are not limited to– (A) matters concerning the administration of the estate . . . [and] (O) other proceedings affecting the liquidation of the assets of the estate or the adjustment of the debtor-creditor or the equity security holder relationship, except personal injury tort or wrongful death claims."

On the other hand, "related to a case under title 11" proceedings are noncore, meaning that the bankruptcy court may not enter final orders or judgments in them. See 28 U.S.C. § 157(c)(1); see also 28 U.S.C. § 157(b)(3). This court is authorized only to submit proposed findings of fact and conclusions of law to the district court. It may enter appropriate orders and judgments only with the consent of all parties to the proceeding. 28 U.S.C. § 157(c)(1). Given the subject motion, though, consent of the parties is highly unlikely in this case.

Cases "under title 11" are the only ones over which district courts have original and exclusive jurisdiction. As to cases "arising under," "arising in," or "related to title 11," district courts have original but nonexclusive jurisdiction, meaning that such cases may be initially brought in state court and then removed to federal court. See 28 U.S.C. § 1334(a) and (b).

A proceeding "arising under title 11" is one that "'invokes a substantive right provided by title 11.'" Gruntz v. County of Los Angeles (In re Gruntz), 202 F.3d 1074, 1081 (9th Cir. 2000) (quoting Wood v. Wood (In re Wood), 825 F.2d 90, 97 (5th Cir. 1987)). A proceeding "arising in a case under title 11" is one that "'by its nature, could arise *only* in the context of bankruptcy case.'" Id.

A proceeding is "related to a case under title 11" if its outcome could conceivably affect the administration of the estate. Lorence v. Does 1 through 50 (In re Diversified Contract Servs., Inc.), 167 B.R. 591, 595 (Bankr. N.D. Cal. 1994) (citing Fietz v. Great Western Savings (In Fietz), 852 F.2d 455, 457 (9th Cir. 1988)).

The plaintiff, Terry Amos, filed the underlying chapter 13 bankruptcy case with co-debtor Ellen Amos, Case No. 14-26702, on June 27, 2014. Docket 2 (the adversary proceeding cover sheet lists only Terry Amos as plaintiff; this is consistent with the complaint, which is signed only by Terry Amos and where only Terry Amos is named as "Plaintiff" (Docket 1 at 1 & 10)). On November 24, 2014, the plaintiff filed the instant adversary proceeding.

A liberal reading of the complaint reveals eight causes of action, including:

(1) a claim for a violation of the Fair Debt Collection Practices Act,

(2) a claim for a violation of the Home Mortgage Disclosure Act,

(3) a claim for a violation of the Community Reinvestment Act,

(4) a claim for a violation of the Equal Credit Opportunity Act,

(5) a claim for a violation of the Real Estate Settlement Procedures Act,

(6) a claim for a violation of the False Claims Act,

(7) wrongful foreclosure, and

(8) fraud.

Docket 1.

The essence of the complaint is a challenge to the propriety of the loan secured by the plaintiff's residential real property and a challenge to the apparent foreclosure on the property.

The plaintiff's underlying chapter 13 case was dismissed on December 10, 2014.

The court does not have subject matter jurisdiction over any of the claims asserted by the plaintiff. None of the claims are core within the meaning of 28 U.S.C. § 157(b)(1).

The claims are not "cases under title 11." None of them invoke a substantive right provided by title 11 or could arise only in the context of the bankruptcy case. See Gruntz v. County of Los Angeles (In re Gruntz), 202 F.3d 1074, 1081 (9th Cir. 2000) (quoting Wood v. Wood (In re Wood), 825 F.2d 90, 97 (5th Cir. 1987)); see also Stoe v. Flaherty, 436 F.3d 209, 216 (3rd Cir. 2006).

The claims are based on federal non-bankruptcy law or state law.

In addition, none of the claims could conceivably affect the administration of the plaintiff's bankruptcy estate. Lorence v. Does 1 through 50 (In re Diversified Contract Servs., Inc.), 167 B.R. 591, 595 (Bankr. N.D. Cal. 1994) (citing Fietz v. Great Western Savings (In Fietz), 852 F.2d 455, 457 (9th Cir. 1988)). The plaintiff's bankruptcy case was dismissed on December 10, 2014 and there is no longer a bankruptcy estate which the claims could conceivably affect.

Finally, to the extent applicable, the court declines to exercise jurisdiction under Carraher v. Morgan Elec., Inc. (In re Carraher), 971 F.2d 327, 328 (9th Cir. 1992). Accordingly, the motion will be granted and all claims against the movant will be dismissed for lack of subject matter jurisdiction. The motion will be granted.

2. 14-26702-A-13 TERRY/ELLEN AMOS — MOTION TO DISMISS ADVERSARY PROCEEDING
14-2326 RJR-1 — 12-24-14 [16]
AMOS V. HSBC MTG. SVCS., INC., ET AL.

Tentative Ruling: The motion will be granted and all claims against MTC Financial, Inc., d.b.a. Trustee Corps, will be dismissed.

Fed. R. Civ. P. 12(b)(6) permits dismissal when a complaint fails to state a claim upon which relief can be granted. Dismissal is appropriate where there is either a lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory. Saldate v. Wilshire Credit

Corp., 686 F. Supp. 2d 1051, 1057 (E.D. Cal. 2010) (citing Balisteri v. Pacifica Police Dept., 901 F.2d 696, 699 (9th Cir. 1990)(as amended)).

"In resolving a Rule 12(b)(6) motion, the court must (1) construe the complaint in the light most favorable to the plaintiff; (2) accept all well pleaded factual allegations as true; and (3) determine whether plaintiff can prove any set of facts to support a claim that would merit relief." See Stoner v. Santa Clara County Office of Educ., 502 F.3d 1116, 1120-21 (9th Cir. 2007); see also Schwarzer, Tashmina & Wagstaffe, California Practice Guide: Federal Civil Procedure Before Trial, § 9.187, p. 9-46, 9-47 (The Rutter Group 2002).

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"In sum, for a complaint to survive a motion to dismiss, the non-conclusory 'factual content,' and reasonable inferences from that content, must be plausibly suggestive of a claim entitling the plaintiff to relief." Moss v. U.S. Secret Service, 572 F.3d 962, 969 (9th Cir. 2009) (quoting Iqbal at 678).

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"In keeping with these principles a court considering a motion to dismiss can choose to begin by identifying pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth. While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations. When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief."

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56." Fed. R. Civ. P. 12(d); S&S Logging Co. v. Barker, 366 F.2d 617, 622 (9th Cir. 1966). If either party introduces evidence outside of the challenged pleading, a court *may* bring the conversion provision (Rule 12(d) - converting motion to dismiss into motion for summary judgment) into operation. Cunningham v. Rothery (In re Rothery), 143 F.3d 546, 548-549 (9th Cir. 1998).

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On the other hand, "related to a case under title 11" proceedings are noncore, meaning that the bankruptcy court may not enter final orders or judgments in them. See 28 U.S.C. § 157(c)(1); see also 28 U.S.C. § 157(b)(3). This court is authorized only to submit proposed findings of fact and conclusions of law to the district court. It may enter appropriate orders and judgments only with the consent of all parties to the proceeding. 28 U.S.C. § 157(c)(1). Given the subject motion, though, consent of the parties is highly unlikely in this

case.

Cases "under title 11" are the only ones over which district courts have original and exclusive jurisdiction. As to cases "arising under," "arising in," or "related to title 11," district courts have original but nonexclusive jurisdiction, meaning that such cases may be initially brought in state court and then removed to federal court. See 28 U.S.C. § 1334(a) and (b).

A proceeding "arising under title 11" is one that "'invokes a substantive right provided by title 11.'" Gruntz v. County of Los Angeles (In re Gruntz), 202 F.3d 1074, 1081 (9th Cir. 2000) (quoting Wood v. Wood (In re Wood), 825 F.2d 90, 97 (5th Cir. 1987)). A proceeding "arising in a case under title 11" is one that "'by its nature, could arise *only* in the context of bankruptcy case.'" Id.

A proceeding is "related to a case under title 11" if its outcome could conceivably affect the administration of the estate. Lorence v. Does 1 through 50 (In re Diversified Contract Servs., Inc.), 167 B.R. 591, 595 (Bankr. N.D. Cal. 1994) (citing Fietz v. Great Western Savings (In Fietz), 852 F.2d 455, 457 (9th Cir. 1988)).

The plaintiff, Terry Amos, filed the underlying chapter 13 bankruptcy case with co-debtor Ellen Amos, Case No. 14-26702, on June 27, 2014. Docket 2 (the adversary proceeding cover sheet lists only Terry Amos as plaintiff; this is consistent with the complaint, which is signed only by Terry Amos and where only Terry Amos is named as "Plaintiff" (Docket 1 at 1 & 10)). On November 24, 2014, the plaintiff filed the instant adversary proceeding.

A liberal reading of the complaint reveals eight causes of action, including:

(1) a claim for a violation of the Fair Debt Collection Practices Act,

(2) a claim for a violation of the Home Mortgage Disclosure Act,

(3) a claim for a violation of the Community Reinvestment Act,

(4) a claim for a violation of the Equal Credit Opportunity Act,

(5) a claim for a violation of the Real Estate Settlement Procedures Act,

(6) a claim for a violation of the False Claims Act,

(7) wrongful foreclosure, and

(8) fraud.

Docket 1.

The essence of the complaint is a challenge to the propriety of the loan secured by the plaintiff's residential real property and a challenge to the apparent foreclosure on the property.

The plaintiff's underlying chapter 13 case was dismissed on December 10, 2014.

The court does not have subject matter jurisdiction over any of the claims asserted by the plaintiff. None of the claims are core within the meaning of 28 U.S.C. § 157(b)(1).

The claims are not "cases under title 11." None of them invoke a substantive right provided by title 11 or could arise only in the context of the bankruptcy case. See Gruntz v. County of Los Angeles (In re Gruntz), 202 F.3d 1074, 1081 (9th Cir. 2000) (quoting Wood v. Wood (In re Wood), 825 F.2d 90, 97 (5th Cir. 1987)); see also Stoe v. Flaherty, 436 F.3d 209, 216 (3rd Cir. 2006).

The claims are based on federal non-bankruptcy law or state law.

In addition, none of the claims could conceivably affect the administration of the plaintiff's bankruptcy estate. Lorence v. Does 1 through 50 (In re Diversified Contract Servs., Inc.), 167 B.R. 591, 595 (Bankr. N.D. Cal. 1994) (citing Fietz v. Great Western Savings (In Fietz), 852 F.2d 455, 457 (9th Cir. 1988)). The plaintiff's bankruptcy case was dismissed on December 10, 2014 and there is no longer a bankruptcy estate which the claims could conceivably affect.

Finally, to the extent applicable, the court declines to exercise jurisdiction under Carraher v. Morgan Elec., Inc. (In re Carraher), 971 F.2d 327, 328 (9th Cir. 1992). Accordingly, the motion will be granted and all claims against the movant will be dismissed for lack of subject matter jurisdiction. The motion will be granted.

3. 14-26702-A-13 TERRY/ELLEN AMOS — STATUS CONFERENCE
14-2326 — 11-24-14 [1]
AMOS V. HSBC MTG. SVCS., INC., ET AL.

Tentative Ruling: None.

4. 14-24002-A-11 BELLA PROPIEDAD L.L.C. — MOTION TO CONVERT OR DISMISS CASE
UST-2 — 1-8-15 [65]

Tentative Ruling: The motion will be granted and the case will be dismissed.

The U.S. Trustee moves for conversion to chapter 7 or dismissal, pursuant to 11 U.S.C. § 1112(b), arguing that:

(1) the debtor has failed to file a plan and disclosure statement in accordance with the court's order requiring the filing of a plan and disclosure statement by August 16, 2014;

(2) the debtor has failed to file its monthly operating reports for November and December 2014;

(3) the creditors' have been prejudiced by the debtor's delay in prosecuting this case, which has been pending for approximately nine months now, since April 18, 2014; and

(4) the debtor's failure to maintain post-petition payments on the claims secured by its two real properties, with no income being generated by either of the properties, amounts to diminution of the estate and the absence of reasonable likelihood of rehabilitation.

Creditor Sunmark Capital L.L.C. has filed a response in support of the motion, urging conversion to chapter 7.

The debtor has filed opposition to the motion.

11 U.S.C. § 1112(b)(1) provides that "on request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under section 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate."

For purposes of this subsection, "'cause' includes- (A) substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation; . . . (F) unexcused failure to satisfy timely any filing or reporting requirement established by this title or by any rule applicable to a case under this chapter . . . ." 11 U.S.C. § 1112(b)(4)(A), (F).

The above instances of cause are not exhaustive. Pioneer Liquidating Corp. v. United States Trustee (In re Consolidated Pioneer Mortgage Entities), 248 B.R. 368, 375 (B.A.P. 9th Cir. 2000). For instance, unreasonable delay that is prejudicial to creditors is also cause for purposes of 11 U.S.C. § 1112(b)(1). Consolidated Pioneer at 375, 378; In re Colon Martinez, 472 B.R. 137, 144 (B.A.P. 1st Cir. 2012).

The debtor's sole response to the delinquent operating reports is that the debtor has filed the reports. Docket 91 at 3.

But, the debtor offers no reasons for the failure to timely file the November and December 2014 reports. Both of these reports were filed only on January 30, 2015. Dockets 81 & 82.

As the debtor has not explained the late-filing of the November and December 2014 reports, the court cannot determine whether the failure to timely file the reports should be excused. See 11 U.S.C. § 1112(b)(4)(F). As such, the debtor's explanation is inadequate and unhelpful. The late-filing of the reports is still cause for dismissal or conversion. Id.

Further, the court agrees that the debtor's failure to maintain post-petition payments on the claims secured by its two real properties amounts to diminution of the estate and the absence of reasonable likelihood of rehabilitation.

As there is no income being generated by either of the properties, the debtor is not only not paying the claims secured by the properties, it is not paying property taxes and general maintenance and upkeep expenses pertaining to the properties either.

For instance, the property in Carmichael, California is a single family residence, demanding monthly maintenance expenses, including, without limitation, utilities, gardening expenses, and cleaning expenses. Docket 89 at 32. Only that property's annual insurance premium is $6,511. Id.

Yet, the debtor's last two operating reports indicate that at the end of November 2014, the debtor had only $245 in cash and at the end of December 2014, it had only $101 in cash. Dockets 81 at 2 & 82 at 2.

Obviously, with such meager cash reserves, the debtor cannot be expected to maintain the properties, let alone reorganize the debts secured by the properties.

The diminution of the estate and the absence of reasonable likelihood of

rehabilitation is further substantiated by the fact that the debtor has not paid the first installment of 2014-15 property tax bill for the Carmichael property. Docket 86 at 3.

Finally, the purchase agreement as to the Carmichael property, offered by the debtor as evidence of its reorganization efforts and ability to reorganize is unpersuasive.

The purchase agreement, subject to court approval, is between the debtor and Carmichael Ventures L.L.C., for the sale of the Carmichael property to Carmichael Ventures for an aggregate purchase price of $2,500,000. Under the agreement, escrow is to close on May 1, 2015. Docket 92 at 2.

The purchase agreement contains many deficiencies, inconsistencies or inadequacies that are not convincing of the debtor's ability to successfully consummate sale of the Carmichael property.

First, while the debtor's supporting declaration of Paula Turtletaub says that the sale is not contingent on Carmichael Ventures obtaining financing, the box titled "NO LOAN CONTINGENCY" in the purchase agreement has not been marked. Docket 93 at 3. As result, the court question the debtor's representations about the terms of the sale.

Second, the court has no evidence whatsoever about the viability and financial abilities of Carmichael Ventures. Whether or not Carmichael Ventures will be obtaining financing to purchase the property, the court cannot tell from the record anything about Carmichael Ventures' ability to purchase the property. There is no evidence of Carmichael Ventures' available funds for the consummation of such a purchase, there is no evidence of Carmichael Ventures' ability to obtain financing, and there is no evidence of Carmichael Ventures' nature and history of business operations.

Third, for several reasons, the court also questions the identity and existence of Carmichael Ventures. As mentioned above, there is no evidence in the record about Carmichael Ventures. The court also has been unable to confirm the existence of Carmichael Ventures with the California Secretary of State. Carmichael Ventures' name does not come up under any searches within California Secretary of State's database for limited liability companies.

And, the name of the individual who executed the purchase agreement on behalf of Carmichael Ventures is not in the purchase agreement. Someone executed the purchase agreement on behalf of Carmichael Ventures by jotting something illegible, but the name and position with Carmichael Ventures of that person has not been disclosed in the purchase agreement. Docket 93 at 10.

Naturally, the court questions the identity and existence of Carmichael Ventures.

Fourth, another reason the court questions the viability of the contemplated sale is that Carmichael Ventures has not made an earnest money deposit with the debtor yet. While the agreement states that Carmichael Ventures will be making a $10,000 deposit, that deposit is to be made only after the court approves the sale. The agreement states that the deposit must be made "within 3 days of approval of this transaction by the US Bankruptcy Court." Docket 93 at 2.

However, the debtor has not even filed the motion to approve the sale.

More, nothing warrants Carmichael Ventures' earnest money deposit to be timed with this court's approval of the sale. Assuming Carmichael Ventures is serious about this transactions, it should have made an earnest money deposit at the time of executing the purchase agreement, on February 2, 2015. Docket 93 at 10.

Additionally, the amount of the deposit, $10,000, is merely 0.4% of the $2.5 million purchase price. Such a deposit is disproportionally small, relative to the purchase price. This is especially true given that the debtor has removed the Carmichael property from the multiple listing service. The property is not being marketed during the 88-day escrow period.
Moreover, there is nothing in the purchase agreement stating that the $10,000 deposit ever becomes nonrefundable. In other words, if Carmichael Ventures decides not to purchase the property prior to May 1, 2015, nothing inhibits it from walking away from this purchase agreement.

On the other hand, if Carmichael Ventures walks away from the purchase prior to May 1, the debtor receives nothing. In fact, the debtor is worse off because it will have lost nearly three months of marketing the property.

In short, the court is not satisfied with the viability of proposed sale and it is not convinced that the sale can be consummated.

The foregoing is cause for dismissal or conversion under 11 U.S.C. § 1112(b)(1).

As the debtor has no unsecured creditors, the court is inclined to dismiss rather than convert the case to chapter 7. Conversion would be in the best interest of the unsecured creditors only. Secured creditors, however, have their state law remedies to look to for relief. The motion will be granted and the case will be dismissed.

5. 14-24002-A-11 BELLA PROPIEDAD L.L.C. — MOTION TO APPROVE COMPENSATION OF DEBTOR'S ATTORNEY
WSS-3 — 1-8-15 [60]

Tentative Ruling: The motion will be granted in part.

The debtor's counsel, W. Steven Shumway, has filed its first interim motion for approval of compensation.

The United States Trustee has filed opposition to the motion, asserting that the movant is not entitled to compensation for preparing the debtor's operating reports. The United States Trustee has identified $990 of compensation that is or could be construed as representing the preparation of operating reports by the movant.

The requested compensation consists of $12,030 in fees and $0.00 in expenses, for a total of $12,030. This motion covers the period from May 1, 2014 through November 13, 2014. The court approved the movant's employment as the debtor's attorney on May 13, 2014. In performing its services, the movant charged an hourly rate of $300.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses."

The movant's services included, without limitation: (1) preparing for and attending IDI and meeting of creditors, (2) communicating with the United States Trustee, (3) preparing pleadings and documents, such as a status report and operating reports, (4) attending court hearings, (5) preparing plan and disclosure statement, (6) reviewing and analyzing proofs of claim, (7) communicating with the debtor's principal about various administration issues, (8) communicating with counsel for the creditors, and (9) preparing and filing employment and compensation motions.

With one exception, the court concludes that the compensation is for actual and necessary services rendered in the administration of this estate. The exception is the services identified by the United States Trustee. The court agrees that the movant was not retained by the debtor to prepare the operating reports. The reports are financial in nature, whereas the movant is a legal professional. He is not a qualified financial professional. The movant was also not retained as a financial professional for the estate. He was retained as a legal professional for the estate. Accordingly, the court will disallow the $990 in compensation identified by the United States Trustee as representing the preparation of operating reports by the movant. The remaining compensation will be approved. The motion will be granted in part.

6. 14-27620-A-12 JOE/MARIA PIMENTEL — MOTION TO DISMISS CASE
JLG-2 — 1-20-15 [48]

Final Ruling: The motion will be dismissed without prejudice because it was not served on all creditors in violation of Fed. R. Bankr. P. 2002(a)(4), which requires that motions to dismiss be served on all creditors. The master address list (Docket 4) contains approximately 26 creditors, whereas this motion was not served on any of them. Docket 52. It was served only on the debtors, their counsel, the chapter 12 trustee, the United States Trustee, and one party that had requested special notice. Docket 52.

7. 13-36133-A-7 GEORGE ROWE — MOTION FOR SUMMARY JUDGMENT
14-2096 USA-1 — 1-9-15 [10]
SOCIAL SECURITY ADMINISTRATION V. ROWE, JR.

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the defendant and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The plaintiff, the United States Social Security Administration, seeks summary judgment on its 11 U.S.C. § 523(a)(2)(A) and (a)(6) claims against the defendant, George Rowe, who is the debtor in the underlying bankruptcy case.

The facts giving rise to this proceeding are as follows. On or about July 16, 2001, the defendant applied for disability insurance benefits with the plaintiff. Docket 13, Ex. 1, RFA 1. The defendant executed the application

under the penalty of perjury. Docket 13, Ex. 4 at 3. In the application, the defendant represented that he would, and knew he had an obligation to, notify the plaintiff in the event he returned to work, regardless of the earnings the defendant was to receive or receiving from his work. Docket 13, Ex. 1, RFA 3 & 12; Docket 13, Ex. 4 at 2-3. The defendant was aware that any income from work may disqualify him, wholly or in part, from receiving disability insurance benefits. Docket 13, Ex. 1, RFA 2; Docket 13, Ex. 4 at 2-3. He was also aware that if the plaintiff overpaid him disability benefits, he would have to repay them back to the plaintiff. Docket 13, Ex. 4 at 2-3.

The plaintiff approved the defendant's application for disability insurance benefits and he began receiving them starting in September 2001. Docket 13, Ex. 1, RFA 4. Based on the defendant's continual absence of reporting employment, the plaintiff provided the defendant with disability benefits until about June 2009. Docket 13, Ex. 1, RFA 5 & 7.

In or about December 2003, and continuing through June 2009, the defendant was employed in a substantial gainful activity under the plaintiff's regulations, disqualifying him from receiving the benefits he actually received. Docket 13, Ex. 1, RFA 5 & 7. The defendant failed to report his work activity to the plaintiff during this period of time. Id.

The defendant earned approximately $28,923.77 of wages in 2003; $17,318.78 of wages in 2004; $55,834.28 of wages in 2005; $33,488 of wages in 2006; $17,159.27 of wages in 2007; $47,962 of wages in 2008; $54,946.76 of wages in 2009; and $68,155.84 of wages in 2010. Docket 13, Ex. 1, RFA 6.

The plaintiff was aware that his maximum allowable incomes for the relevant time period were as follows: $6,840 ($570/month) for 2003; $6,960 ($580/month) for 2004; $7,080 ($590/month) for 2005; $7,440 ($620/month) for 2006; $7,680 ($640/month) for 2007; $8,040 ($670/month) for 2008; $8,400 ($700/month) for 2009; and $8,640 ($720/month) for 2010. Docket 13, Ex. 1, RFA 9.

The defendant earned more than the maximum allowable income for each year from 2003 through 2010. Docket 13, Ex. 1, RFA 10. He knew he was required to and had a duty to report his work activity to the plaintiff during the period he received benefits and was employed. Docket 13, Ex. 1, RFA 3 & 12; Docket 13, Ex. 4 at 2-3.

In March 2010, the plaintiff informed the defendant that it had determined he had received an overpayment of $46,167.60 and he was required to reimburse the plaintiff. Docket 13, Ex. 1, RFA 11 & 19. The defendant made payments totaling $2,191.89 in reimbursement payments to the plaintiff. Docket 13, Ex. 1, RFA 24. On December 30, 2013, the defendant filed the underlying chapter 7 bankruptcy case. Case No. 13-36133-A-7. As of the petition date, the defendant owed the plaintiff $43,975.71. Docket 13, Ex. 1, RFA 25.

The instant complaint was filed timely by the plaintiff on April 7, 2014. Docket 1.

On July 1, 2014, the plaintiff propounded discovery on the defendant, including interrogatories and document production requests. Docket 12 at 2. On July 8, 2014, the plaintiff served the defendant with a first set of requests for admission. Docket 12 at 2; Docket 13 at 11.

After the defendant failed to respond to the requests, the plaintiff sent a letter to the defendant on August 27, 2014, in an attempt to "meet and confer"

with the plaintiff for purposes of Fed. R. Civ. P. 37(a)(1). Docket 12 at 2; Docket 13 at 12. The defendant failed to respond to the letter. Docket 12 at 2.

On October 24, 2014, the plaintiff noticed a deposition for the defendant, for November 12, 2014, but the defendant failed to appear. Docket 12 at 2.

Summary judgement is appropriate when there exists "no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). The Supreme Court discussed the standards for summary judgment in a trilogy of cases, Celotex Corporation v. Catrett, 477 U.S. 317, 327 (1986), Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986), and Matsushita Electrical Industry Co. v. Zenith Radio Corp., 475 U.S. 574 (1986). In a motion for summary judgment, the moving party bears the initial burden of persuasion in demonstrating that no genuine issues of material fact exist. See Anderson at 255. A genuine issue of material fact exists when the trier of fact could reasonably find for the non-moving party. Id. at 248. The court may consider pleadings, depositions, answers to interrogatories and any affidavits. Celotex at 323.

Fed. R. Civ. P. 36(a)(3), as made applicable here by Fed. R. Bankr. P. 7036, provides a responding party to requests for admission, with 30 days to respond. The effect of not responding to a request for admissions is that the "matter is admitted, unless within 30 days after being served, the party to whom the request is directed serves on the requesting party a written answer or objection addressed to the matter and signed by the party or its attorney." Fed. R. Civ. P. 36(a)(3).

To the extent the evidence in the record comes from statements by the defendant, such statements are not hearsay and are admissible under Fed. R. Evid. 801(d)(2)(A) as the statements are offered against the defendant.

11 U.S.C. § 523(a)(2) provides that an individual is not discharged "from any debt for money . . . , to the extent obtained by- (A) false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition."

11 U.S.C. § 523(a)(2)(A) requires a showing that: (1) the defendant made representations; (2) the defendant knew them to be false, when he made them; (3) he made the representations with the intent and purpose to deceive the plaintiff; (4) the plaintiff justifiably relied on the representations; and (5) as a result, the plaintiff sustained damage. Younie v. Gonya (In re Younie), 211 B.R. 367, 373 (B.A.P. 9th Cir. 1997); see also Providian Bancorp. (In re Bixel), 215 B.R. 772, 776-77 (Bankr. S.D. Cal. 1997) (citing Field v. Mans, 516 U.S. 59, 59-60 (1995) (holding that "§ 523(a)(2)(A) requires justifiable, but not reasonable, reliance")). These elements are virtually identical to the elements of common law or actual fraud. Younie, 211 B.R. at 374; Advanta Nat'l Bank v. Kong (In re Kong), 239 B.R. 815, 820 (B.A.P. 9th Cir. 1999).

As the defendant failed to respond to the requests for admission within the 30-day period prescribed by Fed. R. Civ. P. 36(a)(3), the matters in the requests are deemed admitted. Most of the evidence for this motion is based on the defendant's admissions to the plaintiff's requests for admission.

When the defendant executed and presented to the plaintiff the application for disability benefits, he promised and obligated himself to report all employment during the time he receives the benefits. His failure to report employment

while he was working, despite receiving benefits from the plaintiff, from December 2003 through June 2009, amounted to a continual misrepresentation to the plaintiff that he was not working.

The defendant knew the representations to be false - when he was making them by failing to report his employment - because he was working.

The defendant has admitted that, by failing to report his employment, he was intending to deceive the plaintiff. Docket 13, Ex. 1, RFA 13.

The plaintiff obviously relied on those misrepresentations and continued to provide the defendant with benefits, even though the defendant's employment from December 2003 through June 2009 disqualified him from receiving benefits.

The court is persuaded that the plaintiff's reliance on the defendant's representations was justifiable, given that the defendant promised in writing to report employment to the plaintiff.

As result from the defendant's misrepresentations to the plaintiff, the plaintiff has been harmed in the amount of $43,975.71. Docket 13, Ex. 1, RFA 25.

The foregoing satisfies the nondischargeability requirements of 11 U.S.C. § 523(a)(2)(A). Accordingly, the court will enter a judgment under section 523(a)(2)(A) against the defendant, in favor of the plaintiff, for $43,975.71. The motion will be granted. The court finds it unnecessary to address the section 523(a)(6) claim.

8. 13-36133-A-7 GEORGE ROWE — STATUS CONFERENCE
14-2096 — 4-7-14 [1]
SOCIAL SECURITY ADMINISTRATION V. ROWE, JR.

Tentative Ruling: None.

9. 13-34541-A-11 6056 SYCAMORE TERRACE L.L.C. — MOTION TO VALUE COLLATERAL
CAH-23 — 1-20-15 [283]
VS. MOHBOOB BOZORGZAD

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent creditors and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The debtor moves for an order valuing the rental real property 6056 Sycamore Terrace Pleasanton, California at $1,920,000 in an effort to strip off the approximately $1,106,000 mortgage claim of Mohboob Bozorgzad on the property and treat it as a wholly unsecured claim. The property is not the debtor's residence.

11 U.S.C. § 1123(b)(5) permits a chapter 11 debtor to modify the rights of secured claim holders, other than claims secured only by the debtor's principal residence.

Pursuant to 11 U.S.C. § 506(a)(1), a secured claim is secured only to the extent of the creditor's interest in the estate's interest in the collateral. 11 U.S.C. § 506(a)(1) provides that:

"An allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property . . . and is an unsecured claim to the extent that the value of such creditor's interest . . . is less than the amount of such allowed claim."

"[The value of the collateral] shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest."

The debtor contends that the property has a value of $1,920,000. The debtor's opinion of value is memorialized in a stipulation with the senior lien holder, approved by the court on April 1, 2014. Dockets 111 & 112.

The property is subject to:

- a first mortgage in favor of JPMorgan Chase Bank for approximately $2,231,587 ($2,250,700.10 per proof of claim),

- a second mortgage in favor of IndyMac Mortgage Services for approximately $250,000,

- a third mortgage in favor of Jahan and Faran Honardoost for approximately $200,000, and

- a mortgage in favor of Mohboob Bozorgzad for approximately $1,106,000, based on an allowed proof of claim by her (POC 6-1; see also Docket 276 (overruling the debtor's objection to the secured portion of Mohboob Bozorgzad's proof of claim)).

While it is not clear from the record what is the priority of Mohboob Bozorgzad's secured claim, it seems clear that her deed of trust was never recorded and her claim is at the least junior to the mortgage claim of JPMorgan Chase Bank, whose October 7, 2007 deed of trust was recorded on October 16, 2007. Docket 52 at 11-27. The court takes judicial notice of JPMorgan Chase Bank's deed of trust pursuant to Fed. R. Evid. 201. Docket 52 at 11-27.

As stated by the December 14, 2006 marital settlement agreement between Mohboob Bozorgzad and the debtor's principal, Hossein Bozorgzad, attached to the March 2, 2007 dissolution judgment appended to a pleading Ms. Tehranian's filed on October 10, 2014:

"Husband shall execute a Promissory Note and Deed of Trust on the 6056 Sycamore property in favor of Wife for the sum of $1,050,000.00 representing security for the Husband's obligation to pay off the Homewood mortgage and the sum of $600,000.00 representing Wife's receipt of the title ownership of Units #7 and #8 in Atwood Village. Wife shall not file or record the Note or Deed of Trust until January 2008. Husband agrees that during the 'hold' period on the Note

and Deed of Trust, that he will not encumber the Sycamore Terrace property or otherwise reduce the equity in the property with any other loans without Wife's consent."

Docket 219 at 10-11, 21. The marital settlement agreement submitted by Ms. Tehranian was executed by both parties, including Mr. Bozorgzad. Docket 219 at 17-32, 32. The court takes judicial notice of the parties' marital settlement agreement pursuant to Fed. R. Evid. 201.

Nevertheless, there is nothing in the record indicating that Mohboob Bozorgzad or anyone else recorded the deed of trust contemplated by the marital settlement agreement. Mohboob Bozorgzad has not responded to this motion. As such, the court concludes that Mohboob Bozorgzad's claim is at the least junior to the mortgage claim of JPMorgan Chase Bank.

The property is not the debtor's residence. The anti-modification provision of 11 U.S.C. § 1123(b)(5) then does not apply. Mohboob Bozorgzad's claim against the property is wholly unsecured within the meaning of 11 U.S.C. § 506(a)(1) because the estate has no equity in the property, after the deduction of JPMorgan Chase Bank's mortgage. Hence, Mohboob Bozorgzad's secured claim will be stripped off, making it a wholly unsecured claim. The motion will be granted only in connection with plan confirmation.

Valuations pursuant to 11 U.S.C. § 506(a) and Fed. R. Bankr. P. 3012 are contested matters and do not require the filing of an adversary proceeding. It is only when such a motion or objection is joined with a request to determine the extent, validity or priority of a security interest, or a request to avoid a lien that an adversary proceeding is required. Fed. R. Bankr. P. 7001(2). Therefore, by granting this motion the court is only determining the value of the respondent's collateral. The court is not determining the validity of a claim or avoiding a lien or security interest. The respondent's lien will remain of record until the plan is completed. See 11 U.S.C. § 349(b). Once the plan is completed, if the respondent will not reconvey/cancel its lien, the court then will entertain an adversary proceeding.

Finally, the stripping off or stripping down of a nonrecourse secured claim creates a recourse general unsecured claim against the debtor's bankruptcy estate. See 11 U.S.C. § 506(a); In re Akram, 259 B.R. 371, 374-75, 377-78 (Bankr. C.D. Cal. 2001) (allowing a deficiency general unsecured claim against the estate in a chapter 13 case after the debtor had obtained a prior chapter 7 discharge and had filed a motion to strip off the surviving in rem claim); In re Gounder, 266 B.R. 879, 880-81 (Bankr. E.D. Cal. 2001) (following Akram and holding that a creditor's deficiency claim against a chapter 13 estate is allowed notwithstanding a prior chapter 7 discharge and the stripping off of the creditor's claim in the chapter 13 proceeding); In re Hill, 440 B.R. 176, 183 (Bankr. S.D. Cal. 2010) (citing to and quoting Gounder with approval, holding after stripping off a claim in a chapter 13 proceeding that the creditor is "'entitled to be paid whatever [is paid generally to unsecured creditors], the prior chapter 7 discharge notwithstanding'"); California Fidelity, Inc. V. Eaton (In re Eaton), Case No. EC-05-1261-PaNMa, WL 6810924 at *6 (B.A.P. 9th Cir. Feb. 28, 2006) (citing Akram and Gounder with approval); Frazier v. Real Time Resolutions, Inc. (In re Frazier), 469 B.R. 889, 902-03 (E.D. Cal. 2012) (citing Gounder with approval); In re Haque, 331 B.R. 524, 527-28 (Bankr. D. Mass 2005) (applying the same principle and following Gounder in the context of lien avoidance motion in a chapter 13 case).

Here, then, although Mohboob Bozorgzad's claim was a nonrecourse claim secured

by the property - given that the obligor on the claim is not the debtor but its principal, the debtor's stripping off of that claim in this case converts the deficiency claim into a general unsecured claim against the debtor's estate.

The application of Akram and Gounder here is not inconsistent with the motion, as it prays that "the Court . . . 2. Determine that any claim held by CREDITOR be treated as a General Unsecured Claim for purposes of the Debtor's Chapter 11 Plan." Docket 283 at 4.

10. 10-41061-A-7 CONSTANCE AGEE — MOTION TO
14-2336 EAT-1 — DISMISS ADVERSARY PROCEEDING AND
AGEE V. RES. CREDIT SOLUTIONS INC., ET AL. — FOR A MORE DEFINITE STATEMENT
1-8-15 [14]

Final Ruling: The motion will be dismissed as moot.

One of the defendants, Sage Point Lender Services, L.L.C., seeks dismissal for lack of subject matter jurisdiction and for failure to state a claim upon which relief can be granted, as pertaining to the claims asserted in the original complaint filed by the plaintiff, Constance Agee, on December 9, 2014. Docket 1.

However, this motion will be dismissed as moot because the plaintiff filed an amended complaint on January 27, 2014, after this motion was filed by the movant. Docket 22. As this motion pertains to the original and not the amended complaint, it will be dismissed as moot.

11. 10-41061-A-7 CONSTANCE AGEE — MOTION TO
14-2336 NLG-1 — DISMISS ADVERSARY PROCEEDING
AGEE V. RES. CREDIT SOLUTIONS INC., ET AL. — 1-7-15 [8]

Final Ruling: The motion will be dismissed as moot.

One of the defendants, Residential Credit Solutions, Inc., seeks dismissal, as pertaining to the claims asserted in the original complaint filed by the plaintiff, Constance Agee, on December 9, 2014. Docket 1.

However, this motion will be dismissed as moot because the plaintiff filed an amended complaint on January 27, 2014, after this motion was filed by the movant. Docket 22. As this motion pertains to the original and not the amended complaint, it will be dismissed as moot.

12. 10-41061-A-7 CONSTANCE AGEE — MOTION TO
14-2336 SMR-1 — DISMISS ADVERSARY PROCEEDING
AGEE V. RES. CREDIT SOLUTIONS INC., ET AL. — 1-8-15 [19]

Final Ruling: The motion will be dismissed as moot.

Two of the defendants, GP Equities, Inc. and AKS Equities, Inc., seek dismissal, as pertaining to the claims asserted in the original complaint filed by the plaintiff, Constance Agee, on December 9, 2014. Docket 1.

However, this motion will be dismissed as moot because the plaintiff filed an amended complaint on January 27, 2014, after this motion was filed by the movant. Docket 22. As this motion pertains to the original and not the amended complaint, it will be dismissed as moot.

13. 14-27083-A-11 DBH-8 — RCK CONSERVATION CO-OP, L.L.C. — MOTION TO APPROVE DISCLOSURE STATEMENT 1-9-15 [128]

Final Ruling: The motion will be dismissed without prejudice because it violates Fed. R. Bankr. P. 2002(b), which requires at least 28 days' notice of the time "for filing objections . . . to consider approval of a disclosure statement." The deadline for filing objections to the approval of the debtor's disclosure statement was on February 3, 2015. See Local Bankruptcy Rule 9014-1(f)(1). Yet, this motion was filed and served on January 9, 2015, only 25 days prior to the deadline for filing objections to the approval of the disclosure statement. Dockets 128 & 135.

14. 14-24088-A-13 14-2222 — HUGO/ALICIA CERVANTES — MOTION FOR ENTRY OF DEFAULT JUDGMENT 1-16-15 [33]
LOPEZ ET AL V. CERVANTES ET AL

Final Ruling: This motion to enter default judgment will be dismissed as moot because the defendants' entries of default were vacated by the court on February 2, 2015. See Docket 47.

15. 14-31890-A-11 — SHAINA LISNAWATI — ORDER TO SHOW CAUSE 1-20-15 [36]

Tentative Ruling: The order to show cause will be discharged, but the debtor shall file and set for hearing all valuation motions in this case within 30 days of February 17, 2015.

The court issued this order to show cause - for conversion to chapter 7 or dismissal of the case under 11 U.S.C. § 1112(b) - due to the lack of legal authority for the debtor to strip off and/or strip down claims secured by real properties in which the debtor owns only partial interest. The debtor owns only 50% interest in a real property in Auburn, California, only 50% interest in a real property in Roseville, California, and a 33.3% interest in and real property in Olivehurst, California. The order to show cause

The debtor has responded to the order to show cause. The single authority presented by the debtor for stripping off and/or stripping down claims secured by real properties in which the debtor owns only partial interest is Assocs. Commercial Corp. v. Rash, 520 U.S. 953 (1997). The language in Rash the debtor directs this court to is:

"*To separate the secured from the unsecured portion of a claim, a court must compare the creditor's claim to the value of 'such property,' i.e., the collateral. That comparison is sometimes complicated. A debtor may own only a part interest in the property pledged as collateral, in which case the court will be required to ascertain the 'estate's interest' in the collateral. Or, a creditor may hold a junior or subordinate lien, which would require the court to ascertain the creditor's interest in the collateral. The § 506(a) phrase referring to the 'creditor's interest in the estate's interest in such property' thus recognizes that a court may encounter, and in such instances must evaluate, limited or partial interests in collateral. The full first sentence of § 506(a), in short, tells a court what it must evaluate, but it does not say more; it is not enlightening on how to value collateral.*"

Rash at 961.

First, the language quoted by the debtor from Rash is dicta. The facts of that case did not involve the stripping off and/or stripping down of a claim secured by a real property in which the debtor owned only a partial interest. Rash concerned the valuation of a tractor truck the debtor desired to retain via his chapter 13 plan. The debtor owned 100% interest in the truck.

Second, although the Supreme Court mentioned that "[a] debtor may own only a part interest in the property pledged as collateral," it never stated that it was permissible to strip the lien from the interest in property not owned by the debtor.

Third, the court is at a loss about how it may value property that is not property of the estate and strip off and/or strip down the loan secured by that property. As the co-owners of the three real properties listed by the debtor in Schedule A are not debtors in bankruptcy cases pending before this court, their interests in the properties are not property of the estate and, thus, this court does not have the authority to determine the value of their interests in the properties and does not have the authority to modify claims secured by their interests in the properties.

More, 28 U.S.C. § 1334(e) prescribes: "(e) The district court in which a case under title 11 is commenced or is pending shall have exclusive jurisdiction—(1) of all the property, wherever located, of the debtor as of the commencement of such case, and of property of the estate; and (2) over all claims or causes of action that involve construction of section 327 of title 11, United States Code, or rules relating to disclosure requirements under section 327."

In other words, this court's subject matter jurisdiction is limited to "all the property . . . of the debtor . . . and of property of the estate." Hence, as the non-filing co-owners' interests in the three real properties are not property of the debtor or the estate, this court has no subject matter jurisdiction over their interests.

In short, the court is not persuaded that there is any legal authority permitting it to value property not belonging to the debtor or the estate or to modify claims secured by such property. As such, the court will order the debtor to file and set for hearing all her valuation motions in this case within 30 days of the February 17, 2015 hearing on this order to show cause. The order to show cause will be discharged.

16. 14-31890-A-11 SHAINA LISNAWATI — STATUS CONFERENCE 12-6-14 [1]

Tentative Ruling: None.

17. 14-24691-A-13 MICHAEL LAMB AND MARGARET LEDOUX-LAMB PGM-1
14-2223 DATACATE, INC. V. LAMB, JR. — MOTION TO COMPEL 1-17-15 [17]

Tentative Ruling: The motion will be granted in part.

The defendant, Michael W. Lamb, Jr., seeks to compel the plaintiff, Datacate Inc., to respond to propounded discovery. The discovery included interrogatories, document production requests, and requests for admission.

The defendant also asks for sanctions against the plaintiff, including deeming the requests for admission admitted and awarding attorney's fees for the

bringing of this motion.

As the plaintiff has not filed a response to this motion and the motion has been brought pursuant to Local Bankruptcy Rule 9014-1(f)(1), the plaintiff has waived its right to challenge the outcome of the motion.

On November 20, 2014, the defendant served on the plaintiff a first set of discovery requests, including requests for admission, interrogatories and document production requests. Docket 16.

After the plaintiff did not respond in any way to the discovery requests, on December 29, 2014 the defendant sent an email and letter via regular mail to the plaintiff, giving the plaintiff until January 7, 2015 to respond to the discovery requests. Docket 19 at 35, Ex. 4.

On January 6, 2015, the plaintiff sent an email and a letter via regular mail to the defendant, stating that she will have the discovery responses from the client on or before January 16, 2015. Docket 19 at 37, Ex. 5.

On January 11, 2015, the defendant sent an email to the plaintiff, giving the plaintiff until January 16, 2015 at 9:00 a.m., to respond to the discovery requests. Docket 19 at 39, Ex. 6.

As of January 17, 2015, the plaintiff still had not responded to the discovery requests.

First, Fed. R. Civ. P. 36(a)(3), as made applicable here by Fed. R. Bankr. P. 7036, provides a responding party to requests for admission, with 30 days to respond.

The effect of not responding to a request for admissions is that the "matter is admitted, unless within 30 days after being served, the party to whom the request is directed serves on the requesting party a written answer or objection addressed to the matter and signed by the party or its attorney." Fed. R. Civ. P. 36(a)(3).

The matters in the requests for admission are deemed admitted as the plaintiff did not timely respond nor request additional time to respond to the requests.

Second, Fed. R. Civ. P. 33(b)(2) and 34(b)(2), as made applicable here by Fed. R. Bankr. P. 7033 and 7034, respectively, provide a responding party to interrogatories and a document production request, with 30 days to respond.

Fed. R. Civ. P. 37(a)(3)(B)(iii) & (iv), as made applicable here by Fed. R. Bankr. P. 7037, permits the party propounding discovery to move to compel responses.

Rule 33(b)(4) provides that "[t]he grounds for objecting to an interrogatory must be stated with specificity. Any ground not stated in a timely objection is waived unless the court, for good cause, excuses the failure." This includes even objections that the information sought is privileged. Davis v. Fendler, 650 F.2d 1154, 1160 (9th Cir. 1981).

The same is true with respect to document production requests under Rule 34. Failure to file a timely objection to the requests constitutes a waiver of any objection. See Richmark Corp. v. Timber Falling Consultants, 959 F.2d 1468, 1473 (9th Cir. 1992).

A court may compel a party to answer interrogatories and deliver documents for discovery after the moving party has attempted in good faith to obtain such without court action. Fed. R. Civ. P. 37(a), incorporated by Fed. R. Bankr. P. 7037.

The movant must show that it conferred or attempted to confer in good faith. In order to comply with Fed. R. Civ. P. 37, the movant must accurately and specifically certify with whom, where, how, and when the movant attempted to personally resolve the discovery dispute. Shuffle Master v. Progressive Games, 170 F.R.D. 166, 170 (D. Nev. 1996). The plaintiff must also certify that it has, in good faith, conferred or attempted to confer to resolve the discovery dispute without judicial intervention. Id. at 171.

The defendant has complied with the certification document requirements because the declaration and exhibits in support of this motion include the specific details of his attempts at communication with the plaintiff. Docket 19 at 34-39, Exs. 4-6.

The defendant has also satisfied the performance requirement by attempting to confer with the plaintiff: the defendant sent a letter to the plaintiff's counsel giving the plaintiff approximately 16 more days (until January 7, 2015) to respond to the discovery; the plaintiff did not respond until the day before the new deadline for discovery responses, unilaterally stating that the plaintiff will take another nine days to respond (until January 16, 2015); although not asked, the defendant once again agreed to extend the deadline for responding to the discovery requests until January 16, 2015; despite this, the plaintiff had not responded to the discovery as of January 17, 2015.

Thus, the defendant is entitled to an order compelling responses to the interrogatories and document production requests. The plaintiff shall have until February 23, 2015, inclusive, to provide the defendant with responses to the interrogatories and document production requests. The plaintiff has waived its right to object to the interrogatories and document production requests, given its failure to timely respond.

Finally, "the court must, after giving an opportunity to be heard, require the party or deponent whose conduct necessitated the motion . . . to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees." Fed. R. Civ. P. 37(a)(5)(A). This remedy, however, is limited only to expenses incurred in making the motion.

The defendant is seeking a total of $1,500 in attorney's fees as sanctions for the bringing of this motion. The fees include $75 (1 hr paralegal time) for preparing the correspondence of December 29, 2014 to the plaintiff's counsel, $150 (0.5 hrs attorney time) for reviewing the January 6, 2015 letter from the plaintiff's counsel, $75 (1 hr paralegal time) for preparing the correspondence of January 11, 2015 to the plaintiff's counsel, and $1,200 (4 hrs attorney time) for preparing and filing the instant motion.

With one exception, the court concludes that the requested fees are reasonable and necessary for the preparation and prosecution of this motion. The exception is the $150 (0.5 hrs attorney time) for reviewing the January 6, 2015 letter from the plaintiff's counsel. As the January 6 letter is barely two short sentences long, the 0.5 hours of attorney time for reviewing the letter were unnecessary and the requested $150 in compensation is not reasonable. 0.1 hours of attorney time were sufficient to review the January 6 letter. The court will award only $30 - for 0.1 hours of attorney time, at a rate of $300

an hour - for the review of the January 6 letter. The court will award sanctions totaling $1,350. The plaintiff shall pay the sanctions to the defendant's counsel no later than February 23, 2015. The motion will be granted in part.

18. 15-20034-A-11 C & N LANDSCAPE MAINTENANCE, INC. — STATUS CONFERENCE 1-5-15 [1]

Tentative Ruling: None.